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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

ALLWAYS EAST TRANSPORTATION, INC.,

Debtor.

HOWARD P. MAGALIFF, Chapter 7 Trustee of
ALLWAYS EAST TRANSPORTATION, INC.,

Plaintiff,

v.

MARLAINA KOLLER a/k/a MARLAINA
CROES and PHOENIX TRANSPORTATION
SERVICES, INC.,

Defendants.

Chapter 7

Case No. 16-22589 (RDD)

Adv. Proc. No. 19-08272 (RDD)

ANSWER TO COMPLAINT

Defendants Marlaina Koller a/k/a Marlaina Croes and Phoenix Transportation Services, Inc. (together, the “**Defendants**”), through counsel, Rosen & Associates, P.C., hereby submits this answer to the complaint dated June 26, 2019 (the “**Complaint**”),¹ filed by plaintiff Howard P. Magaliff, as Chapter 7 Trustee of Allways East Transportation, Inc. (the “**Trustee**”), and submits as follows:

¹ Capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the Complaint.

AS TO NATURE OF THE ACTION

1. Defendants admit that the Trustee purports to have brought this action pursuant to the rules cited therein. To the extent the allegations in paragraph 1 state a legal conclusion, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 1 of the Complaint.

2. Defendants admit that the Debtor was an owner and operator of a fleet of buses and other transport vehicles that provided various transportation services. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 2 of the Complaint.

3. To the extent the allegations in paragraph 3 state legal conclusions regarding the operations of the Debtor's business, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraph 3 of the Complaint.

4. To the extent the allegations in paragraph 4 state legal conclusions regarding the pecuniary state of the Debtor's business, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraph 4 of the Complaint.

5. Defendants deny the allegations in paragraph 5 of the Complaint.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. To the extent the allegations in paragraph 8 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraph 8 of the Complaint.

9. To the extent the allegations in paragraph 9 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraph 9 of the Complaint.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. To the extent the allegations in paragraphs 11 and 12 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraphs 11 and 12 of the Complaint.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 13 and 14 of the Complaint.

13. To the extent the allegations in paragraph 15 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraph 15 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 15 of the Complaint.

14. To the extent the allegations in paragraph 16 relate to the Debtor, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. Otherwise, Defendants deny the allegations in paragraph 16 of the Complaint.

15. Defendants admit that this adversary proceeding seeks to avoid certain transfers pursuant to the rules cited therein. To the extent the allegations in paragraph 17 state a legal conclusion, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 17 of the Complaint.

AS TO PARTIES

16. To the extent the allegations in paragraph 18 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraph 18 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 18 of the Complaint.

17. Defendants admit the allegations contained in paragraphs 19 through 25 of the Complaint.

18. To the extent the allegations in paragraph 26 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraph 26 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 26 of the Complaint.

19. To the extent the allegations in paragraphs 27 through 30 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraphs 27 through 30 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraphs 27 through 30 of the Complaint.

20. Defendants admit the allegations contained in paragraph 31 of the Complaint.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

22. Defendants deny the allegations contained in paragraphs 33 through 35 of the Complaint; however, admit that Phoenix is a corporation incorporated under the laws of the State of New York.

23. Defendants admit the allegations contained in paragraph 36 of the Complaint.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

25. To the extent the allegations in paragraphs 38 and 39 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraphs 38 and 39 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraphs 38 and 39 of the Complaint.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

AS TO JURISDICTION AND VENUE

27. Defendants neither admit nor deny the allegations contained in paragraphs 41 through 44 of the Complaint, as such allegations are legal conclusions to which no response is required; however, admit that this is a core proceeding.

28. Defendants consent to the entry of final orders or judgment by the Bankruptcy Court pursuant to Bankruptcy Rule 7008.

AS TO FACTUAL BACKGROUND

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 46 and 47 of the Complaint.

30. To the extent the allegations in paragraphs 48 through 50 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraphs 48 through 50 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraphs 48 through 50 of the Complaint.

31. To the extent the allegations in paragraphs 51 through 54 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraphs 51 through 54 of the Complaint.

32. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 55 through 57 of the Complaint.

33. To the extent the allegations in paragraphs 58 and 59 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. To the extent the allegations in paragraphs 58 and 59 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraphs 58 and 59 of the Complaint.

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 60 through 62 of the Complaint.

35. To the extent the allegations in paragraphs 63 through 65 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations in paragraphs 63 through 65 of the Complaint.

36. To the extent the allegations in paragraphs 66 and 67 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited

documents for a complete and accurate statement of their contents. To the extent the allegations in paragraphs 66 and 67 state legal conclusions, no responsive pleading is required. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraphs 66 and 67 of the Complaint.

37. Defendants deny the allegations contained in paragraphs 68 and 70 of the Complaint.

38. To the extent the allegations in paragraphs 71 through 84 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 71 through 84 of the Complaint.

39. Defendants deny the allegations contained in paragraph 85 of the Complaint.

40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 86 through 88 of the Complaint.

41. Defendants deny the allegations contained in paragraph 89 of the Complaint.

42. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 90 through 91 of the Complaint.

43. To the extent the allegations in paragraph 92 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraph 92 of the Complaint.

44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint.

45. Defendants deny the allegations contained in paragraph 94 of the Complaint.

46. To the extent the allegations in paragraphs 94 through 98 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 94 through 98 of the Complaint.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 99 and 100 of the Complaint.

48. Defendants admit the allegations contained in paragraph 101 of the Complaint.

49. To the extent the allegations in paragraphs 102 through 108 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 102 through 108 of the Complaint.

50. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 109 through 115 of the Complaint.

51. To the extent the allegations in paragraphs 116 through 120 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 116 through 120 of the Complaint.

52. To the extent the allegations in paragraph 121 purport to cite or summarize publicly filed documents, Defendants respectfully refers the Court to the actual cited documents for a complete and accurate statement of their contents. Otherwise, except as expressly admitted, Defendants deny the allegations in paragraph 121 of the Complaint.

53. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 122 and 123 of the Complaint.

54. To the extent the allegations in paragraph 124 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraph 124 of the Complaint.

55. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 125 through 129 of the Complaint.

AS TO FIRST CAUSE OF ACTION

56. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 129 of the Complaint as if fully set forth herein.

57. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 131 of the Complaint.

58. To the extent the allegations in paragraphs 132 through 149 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 132 through 149 of the Complaint.

AS TO SECOND CAUSE OF ACTION

59. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 149 of the Complaint as if fully set forth herein.

60. To the extent the allegations in paragraphs 151 through 162 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 151 through 162 of the Complaint.

AS TO THIRD CAUSE OF ACTION

61. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 162 of the Complaint as if fully set forth herein.

62. To the extent the allegations in paragraphs 163 through 169 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 163 through 169 of the Complaint.

AS TO FOURTH CAUSE OF ACTION

63. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 169 of the Complaint as if fully set forth herein.

64. To the extent the allegations in paragraphs 171 through 184 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 171 through 184 of the Complaint.

AS TO FIFTH CAUSE OF ACTION

65. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 184 of the Complaint as if fully set forth herein.

66. To the extent the allegations in paragraphs 186 through 190 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 186 through 190 of the Complaint.

AS TO SIXTH CAUSE OF ACTION

67. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 190 of the Complaint as if fully set forth herein.

68. To the extent the allegations in paragraphs 192 through 194 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 192 through 194 of the Complaint.

AS TO SEVENTH CAUSE OF ACTION

69. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 194 of the Complaint as if fully set forth herein.

70. To the extent the allegations in paragraphs 196 through 207 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 196 through 207 of the Complaint.

AS TO EIGHTH CAUSE OF ACTION

71. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 207 of the Complaint as if fully set forth herein.

72. To the extent the allegations in paragraphs 209 through 218 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 209 through 218 of the Complaint.

AS TO NINTH CAUSE OF ACTION

73. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 218 of the Complaint as if fully set forth herein.

74. To the extent the allegations in paragraphs 220 through 225 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 220 through 225 of the Complaint.

AS TO TENTH CAUSE OF ACTION

75. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 225 of the Complaint as if fully set forth herein.

76. To the extent the allegations in paragraphs 227 and 228 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 227 and 228 of the Complaint.

AS TO ELEVENTH CAUSE OF ACTION

77. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 228 of the Complaint as if fully set forth herein.

78. To the extent the allegations in paragraphs 230 through 236 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 230 through 236 of the Complaint.

AS TO TWELFTH CAUSE OF ACTION

79. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 236 of the Complaint as if fully set forth herein.

80. To the extent the allegations in paragraphs 238 through 244 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 238 through 244 of the Complaint.

AS TO THIRTEENTH CAUSE OF ACTION

81. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 244 of the Complaint as if fully set forth herein.

82. To the extent the allegations in paragraphs 246 through 250 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 246 through 250 of the Complaint.

AS TO FOURTEENTH CAUSE OF ACTION

83. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 250 of the Complaint as if fully set forth herein.

84. To the extent the allegations in paragraphs 252 through 256 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 252 through 256 of the Complaint.

AS TO FIFTEENTH CAUSE OF ACTION

85. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 256 of the Complaint as if fully set forth herein.

86. To the extent the allegations in paragraphs 258 through 261 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 258 through 261 of the Complaint.

AS TO SIXTEENTH CAUSE OF ACTION

87. Defendants repeat, re-allege and incorporates by reference their responses to paragraphs 1 through 261 of the Complaint as if fully set forth herein.

88. To the extent the allegations in paragraphs 262 through 266 state legal conclusions, no responsive pleading is required. Otherwise, Defendants deny the allegations contained in paragraphs 262 through 266 of the Complaint.

AS AND FOR DEFENDANTS' FIRST AFFIRMATIVE DEFENSE

89. The Trustee's claims are barred in whole or in part by applicable statute of limitations.

AS AND FOR DEFENDANTS' SECOND AFFIRMATIVE DEFENSE

90. The Trustee's claims must be dismissed based upon documentary evidence or lack thereof.

AS AND FOR DEFENDANTS' THIRD AFFIRMATIVE DEFENSE

91. The Trustee's claims are barred by the doctrine of waiver.

AS AND FOR DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE


92. The Trustee's claims are barred by the doctrine of laches and/or estoppel.

WHEREFORE, Defendants respectfully request that this Court enter an order:

- (1) dismissing the subject Complaint; and
- (2) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 24, 2019

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